

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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BUSYSTORE LIMITED IN LIQUIDATION,  
and BERGFELD CO. LIMITED,

Plaintiffs,

v.

CUSHMAN & WAKEFIELD OF  
PENNSYLVANIA, INC., BLANK ROME  
LLP,

Defendants.

Civil Action No.: 2:13-CV-05195

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CUSHMAN & WAKEFIELD OF  
PENNSYLVANIA, INC.,

Third-Party Plaintiff,

v.

CHAIM ZEV LEIFER, HESKEL KISH, and  
JFK BLVD. ACQUISITION G.P., LLC,

Third-Party Defendants.

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**TRIAL MEMORANDUM OF DEFENDANT/THIRD-PARTY PLAINTIFF  
CUSHMAN & WAKEFIELD OF PENNSYLVANIA, INC.**

Pursuant to the Court’s Second Amended Scheduling Order (ECF 261), Defendant/Third-Party Plaintiff Cushman & Wakefield of Pennsylvania, Inc. (“C&W”) submits the following trial memorandum setting forth the legal issues in the case. The factual discussion of the case set forth in C&W’s Amended Pretrial Memorandum (ECF 263) is incorporated here by reference. For purposes of brevity, this final trial memorandum discusses the facts of the case only to the extent necessary to contextualize the legal issues set forth below.

In addition, this trial memorandum does not address the various legal issues raised by C&W regarding the admissibility of evidence at trial. Those issues are collectively discussed in C&W's Motions in Limine Nos. 1 through 11, filed on November 22, 2019.

**LEGAL ISSUES INVOLVED IN THE CASE**

- A. Plaintiffs cannot recover on their fraudulent misrepresentation claim against C&W because neither Plaintiffs nor their agent, Berish Berger, was an intended user of C&W's Appraisal.
- B. Plaintiffs cannot prove the elements of their fraudulent misrepresentation claim against C&W by clear and convincing evidence.
  - 1. Plaintiffs cannot establish justifiable reliance because they cannot show that they acted reasonably when they decided to send funds to Weinstein in January 2007.
  - 2. Plaintiffs cannot establish that C&W falsely represented that there were no height restrictions applicable to the River City Property as of the effective date of the Appraisal.
  - 3. Plaintiffs cannot carry their burden to prove causation by clear and convincing evidence.
    - a. Plaintiffs cannot prove that any alleged misrepresentation by C&W was the cause of their loss because the factual and legal cause of their injury was Eli Weinstein.
    - b. Weinstein's religious affinity Ponzi scheme was the superseding cause of Plaintiffs' loss.
  - 4. Plaintiffs cannot prove that C&W's Appraisers intended to induce Plaintiffs to rely on the Appraisal.
  - 5. Plaintiffs cannot prove that the Appraisal was misleading in its opinion of value and statement of compliance with professional standards, and, even if true (which they are not) neither caused the theft of Plaintiffs' money.
  - 6. Plaintiff Bergfeld cannot recover the \$5 million it transferred to Weinstein because the facts at trial will show that the transfer was made for the 2040 Market Street purchase.
- C. If C&W is found liable, it will prevail on its indemnification claim against Third-Party Defendant JFK BLVD Acquisition GP LLC because JFK provided the Appraisal to others including Plaintiffs in breach of the engagement letter with C&W.

Dated: January 24, 2020

Respectfully Submitted By:

/s/ Nathan P. Heller

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**CERTIFICATE OF SERVICE**

I certify that on January 24, 2020, I caused a copy of the foregoing trial memorandum to be served via the Court's CM/ECF system on:

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By: /s/ Nathan P. Heller  
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